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**Subject:** Reallocating Section 319 funds pursuant to CZARA  
**Date:** Friday, June 17, 2016 6:34:38 AM  
**Attachments:** [CZARA funds withholding and redistribution O and A.docx](#)

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TO: State Nonpoint Source Coordinators and Coastal Nonpoint Program Managers in CZARA coastal states and territories

Dear Colleagues,

As you know, on January 30, 2015, NOAA and EPA jointly found that the State of Oregon failed to submit an approvable coastal nonpoint program under Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA). As a result of this finding the statute calls for NOAA and EPA to withhold 30% of funding under Section 306 of the Coastal Zone Management Act (CZMA) and Section 319 of the Clean Water Act (CWA), respectively. The statute also states that NOAA and EPA shall redistribute these withheld funds to states with approved coastal nonpoint programs. NOAA and EPA have recently acted to reallocate withheld FY15 and FY16 funds to states and territories with approved coastal nonpoint programs.

We have received some questions from states about how this action will impact the funding that fully approved states and territories receive under CZMA Section 306 and CWA Section 319. To address these questions we are sharing with you the attached Q&A. This week we discussed these funding impacts and questions with the Coastal States Organization 6217 Workgroup that many of you or your staff participate on.

NOAA and EPA do not approach lightly the action of withholding funds. We recognize the challenges these funding cuts present for Oregon's water quality programs. We also realize that states with conditionally approved programs may be concerned about potential future funding impacts if they are not able to develop fully approvable programs. The federal agencies are committed to continuing to work closely with Oregon and all conditionally approved states to achieve fully

approved programs as soon as possible.

Please let me or Don Waye [waye.don@epa.gov](mailto:waye.don@epa.gov) know if you have any additional questions. Feel free to forward this email to other nonpoint staff as necessary.

Regards,  
Lynda

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202.566.1210

## **Questions and Answers on Reallocation of Section 306 and Section 319 Funds under CZARA**

**QUESTION:** What action did NOAA and EPA take regarding withholding grant funds from Oregon?

**ANSWER:** In 2015, NOAA and EPA held a portion of grant funds from Oregon after having found that Oregon had failed to submit an approvable Coastal Nonpoint Pollution Control Program (Coastal Nonpoint Program) under the Coastal Zone Act Reauthorization Amendments (CZARA). NOAA withheld \$598,000 of FY2015 CZMA section 306 grant funds via a special award condition (SAC) and EPA withheld \$631,500 of FY2015 CWA section 319 grant funds via a SAC. In spring 2016, those funds were deobligated from Oregon's grants and redistributed to 17 states and 5 territories with fully approved coastal nonpoint programs. Also in spring 2016, NOAA and EPA each withheld additional funds from Oregon's CZMA section 306 (\$637,500) and CWA section 319 grants (\$435,540) and redistributed them to the 22 states and territories with fully approved coastal nonpoint programs.

NOAA and EPA do not approach this funding decision lightly. We recognize that withholding a portion of grant funds will make it more difficult for Oregon to maintain the same level of effort on key programs that help to improve water quality and protect salmon habitat, such as the state's coastal management, TMDL, and nonpoint source programs.

**QUESTION:** Why did NOAA and EPA take these actions?

**ANSWER:** Under Section 6217 of CZARA, when NOAA and EPA make a finding that a state has not submitted an approvable coastal nonpoint program, as NOAA and EPA found for Oregon in January 2015, the statute requires NOAA and EPA to withhold a portion of the funds the state receives under Section 306 of the Coastal Zone Management Act (CZMA) and Section 319 of the Clean Water Act (CWA) and to redistribute those funds to states and territories with approved coastal nonpoint program.

**QUESTION:** Why are we hearing now about withholding funding for Oregon under CZMA Section 306 and CWA Section 319 when NOAA and EPA made a decision that Oregon had failed to submit an approvable coastal nonpoint pollution control program more than a year ago?

**ANSWER:** NOAA and EPA have been withholding a portion of Oregon's funding under these grant programs since the state's FY2015 awards were issued in the summer of 2015. Those were the first new grant awards issued after NOAA and EPA made their joint finding in January 2015 that Oregon failed to submit an approvable program. The new action now is that NOAA and EPA have jointly deobligated those withheld funds from Oregon's FY2015 awards and have begun to distribute them to states with fully approved coastal nonpoint program, as required by the statute. Additionally, in spring 2016, NOAA and EPA each withheld additional funds from Oregon's CZMA section 306 (another \$637,500) and CWA section 319 grants (another \$435,540) and are redistributing them to the 22 states and territories with fully approved coastal nonpoint program.

Earlier this year, the agencies faced an imminent deadline for making a joint decision on the disposition of the FY2015 grant funds that were withheld under a grant “term and condition” in Oregon’s CZMA section 306 and CWA section 319 grants. Specifically, NOAA’s funding is “2-year” funding which, if not utilized by the end of FY2016, expires and must be returned to the U.S. Treasury. NOAA and EPA needed to act, in concert, by April 2016 to deobligate the withheld funds from Oregon’s award to allow the agencies time to redistribute these funds to the 22 states and territories with fully approved coastal nonpoint programs as required under the CZARA statute.

**QUESTION:** Why did NOAA and EPA withhold different amounts of funds? Specifically, why did the amount withheld from Oregon increase for NOAA and decrease for EPA?

**ANSWER:** CZARA uses different statutory language for NOAA and EPA in the provision that requires both agencies to withhold grant funds from any state where there has been a finding that the state has failed to submit an approvable CNPCP. CZARA requires NOAA to withhold a fixed portion of a state’s CZMA section 306 grant “otherwise available to the state” for a given annual grant cycle, and further specifies that it is fixed at “30% for fiscal year 1999 and each fiscal year thereafter.” Since the national allocation of CZMA section 306 funding increased in FY16, the funding allocation to Oregon increased. The percent withheld remained fixed at 30%, but it was 30% of a greater amount of funds.

CZARA uses more complicated language for EPA to establish the amount to be withheld from a state’s CWA section 319 grant. Specifically, the statute calls for the withheld amount to be calculated as “30 percent of the amount awarded for... [the] preceding fiscal year”. Using this basis, for FY2015, the amount withheld from Oregon in FY2015 was 30% of Oregon’s FY2014 grant award (30% of \$2,105,000, or \$631,500). For FY2016, EPA has withheld 30% of Oregon’s FY2015 award from its FY2016 allocation. As it is for every state, Oregon’s allocation of the nation’s 319 funds is a fixed percentage that does not change from year to year. However, as a result of the statutory requirement that the withheld amount be taken from the previous year’s award amount, the withheld amount is smaller for FY2016 than it was for FY2015 because the 30% withholding is applied to an already-reduced FY2015 award amount for Oregon. Specifically, since Oregon’s FY2015 award was \$1,451,800, the amount that EPA has withheld from its FY2016 award is \$435,540.

**QUESTION:** Which are the 17 states and 5 territories that are receiving the funds withheld from Oregon and how were they selected?

**ANSWER:** The CZARA statute says that NOAA and EPA shall distribute any withheld funds to states with federally approved coastal nonpoint programs. There are currently 17 states and 5 territories with fully approved coastal nonpoint programs. The 17 states are:

- California
- Connecticut
- Delaware
- Florida

- Maine
- Maryland
- Massachusetts
- Minnesota
- New Hampshire
- New Jersey
- New York
- North Carolina
- Pennsylvania
- Rhode Island
- South Carolina
- Virginia
- Wisconsin

The 5 territories are:

- American Samoa
- Guam
- Northern Mariana Islands
- Puerto Rico
- U.S. Virgin Islands

With regard to NOAA-administered CZMA section 306 grants, each state and territory will receive anywhere from \$18,000 to \$30,000 in additional funding to implement their coastal management programs from the withheld portion of Oregon's FY2015 grant. Additionally, states and territories will receive anywhere from \$17,000 to \$33,000 in additional funding from the withheld portion of Oregon's FY2016 CZMA section 306 grant. The specific funding amount each state receives is determined by applying the funding formula NOAA uses to allocate all Section 306 funds to states based on the size of the state's coastal population and shoreline mileage.

With regard to EPA-administered CWA section 319 grant awards, territories will each receive between \$10K and \$20K (based on their size) from the withheld portions of Oregon's 319 award for FY15 and FY16, with the 17 states equally dividing the remainder. From the withheld portion of Oregon's FY15 CWA section 319 grant, each state will receive \$33,618 and from the withheld portion of Oregon's FY2016 CWA section 319 grant, each state will receive \$22,091.

**QUESTION:** What is the impact on Oregon regarding the loss of these grant funds?

**ANSWER:** NOAA withheld \$598,000 in FY2015 section 306 funding and another \$637,500 in FY2016 section 306 funding that goes to support Oregon's Coastal Management Program (OCMP). The impacts of that lost funding included the loss of at least 2 FTE staff positions responsible for technical assistance and program development on climate change adaptation, resilience work and coastal GIS applications. Additionally, OCMP has eliminated all planning assistance and technical assistance grants to the 36 coastal cities and counties and the

Columbia River Estuary Study Taskforce. Finally, OCMP has needed to eliminate one of two yearly coastal planner meetings and has significantly reduced OCMP's travel budget, further affecting delivery of local technical assistance.

EPA withheld \$631,500 from Oregon in its FY2015 CWA section 319 grant and \$435,540 in its FY2016 319 grant. With this cut, Oregon's Nonpoint Source Program has had to significantly cut funding to local governments, tribal nations and nonprofit organizations to support projects that address nonpoint source water quality problems. In particular, the cuts are affecting the implementation of TMDLs to restore water quality in priority watersheds.

**QUESTION:** Will NOAA and EPA continue to withhold a portion of the funding it provides Oregon under CZMA Section 306 and CWA Section 319 each year until the state receives full approval for its coastal nonpoint program?

**ANSWER:** NOAA and EPA will continue to withhold grant funds for each subsequent funding year until the agencies find that Oregon has no longer failed submitted a fully approvable program.


**QUESTION:** How much will NOAA and EPA withhold from Oregon from each grant in the future?

**ANSWER:** Should NOAA and EPA need to withhold grant funds from Oregon in the future, NOAA's basis for determining the amount withheld in a given year is a reflection of the level of funding that Congress establishes for CZMA section 306 each year. So if Congress funds the CZMA program at a higher or lower amount in the future, the amount withheld will also increase or decrease. EPA's basis for determining the amount withheld is a reflection of the level of funding that Congress established for CWA section 319 the preceding year and more specifically the size of the state's grant award in that preceding year. The withheld amount is subtracted from Oregon's allocation of 319 funds available nationally in the current grant year

The following chart illustrates the effects of EPA's calculation over the first two years of withholding 319 funds from Oregon and forecasts what the withholdings would be in FY17 and FY18 should the state remain in a disapproved status.

Amount  
withheld is 30%  
of the previous  
year's award

Award amount =  
allotment minus  
amount withheld



Fiscal Year	State's 319 Allocation	Withheld amount	Post-Penalty 319 Award (\$ million)
2014	\$2,105,000		
2015	\$2,083,000	30% of \$2.105 million = <b>\$631,500</b>	\$1.452
2016	\$2,153,000	30% of \$1.452 million = <b>\$435,540</b>	\$1.717
2017*	\$2,153,000	30% of \$1.717 million = <b>\$515,238</b>	\$1.638
2018*	\$2,153,000	30% of \$1.638 million = <b>\$491,329</b>	\$1.662

\*Assumes annual allocation remains steady at 2016 funding levels